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Councillor K Foale
Leader of the Labour Group
Nottinghamshire County Council

17 March 2023

Dear Councillor Foale,

Thank you for your letter dated 13 March 2023, in connection with the Cabinet decision on 9 March in respect of the **All Age Carers Strategy**.

You described the purpose of your letter as beginning the pre call-in procedure and indicated your intention to seek to call-in the Cabinet decision if concerns are unresolved. Normally, as set out in the Constitution, these stages of the process are dealt with sequentially. As discussed, on this occasion, I have considered all of your points together as it is unclear which points apply to which specific part of the process.

The concerns you raise in your letter are that the above decision:

1. may not have been made in accordance with the law
2. may not have sufficiently described options or given reasons

You raise concerns about the involvement of colleagues from scrutiny committees whose views were sought via informal dialogue meetings and indicate that that such meetings:

- A. were not in accordance with the recognised scrutiny process within the Council's Constitution
- B. may have been undertaken in contravention of the Local Government Act 1972, and
- C. may have misrepresented views of members

Taking these together:

Your concerns about lawfulness appear to stem from the concerns you have about the basis on which meetings with the scrutiny committee members were labelled, how they were conducted and reflected in the report.

The section of the report describing the dialogue with select committee members is set out clearly under a heading "Informal Dialogue with Select Committees" and describes the meetings as briefings in paragraphs 39, 40 and 41. The intent and status of the meetings is clear.

Paragraph 43 does refer to "pre-decision scrutiny" which is an error in the description of one word. The word scrutiny should have been dialogue.

From my enquiries of officers, I understand that Labour members of the select committees were willing to attend these briefings and to be involved in the discussion.

I would also refer you to paragraph 4 on page 92 of the Constitution which clearly allows for other types of interaction between members of the Executive and Scrutiny and relevant officers:

“Nothing in these rules prevents more detailed liaison between Cabinet/Overview/Select Committees as appropriate” and goes on to say that “the aim will be to develop a positive and constructive relationship between the Cabinet and the Overview and Scrutiny function”. In my assessment these meetings were part of a genuine attempt to engage a wider cohort of members in the exchange of information and views to support improved decision making.

You indicate that members were told that meetings would be held in private and that no minutes would be taken nor voting carried out. That is what I would expect at an informal meeting. Although some notes of questions and views expressed were captured and reported in the Cabinet report, these were not (and could not have been) formal minutes, and no voting would take place in an informal briefing session. I have not been advised that members in these briefing sessions expressed concerns at the time.

You also say that members views were misrepresented, however you do not say how or in what way.

My understanding is that the Department was keen to engage in some form of dialogue with the Select Committee members for both Children and Adults.

The advice of the Statutory Scrutiny Officer was that since the reports which were to be considered would be draft or in development, it would not be appropriate for them to be published as part of a formal Select Committee meeting, hence the proposal for an informal meeting. There is no legal requirement to undertake formal scrutiny in these circumstances.

In addition, no planned provision had been made within the agreed work programme for Children’s Select Committee to enable formal scrutiny to take place in a timely fashion.

Instead of having no insight from a broad range of scrutiny members, and I believe with the best of intentions, officers arranged these sessions inviting all members from the select committees. Those members who were able to, then attended and contributed to the dialogue.

Those sessions were incorrectly labelled in meeting invitations as “pre-decision scrutiny”. In fact, as you describe in your letter, they were an attempt at some informal dialogue by way of briefings, to provide a wider cohort of members who may have an interest in this subject with some information and the opportunity to raise questions etc about an upcoming Cabinet decision.

As you correctly state, such meetings could not have involved the taking of formal minutes or voting, since the meetings were informal in nature. We accept that by trying to provide more information and involvement within an informal setting this may have created an unhelpful lack of clarity about what these sessions were. However, our understanding is that the comments reported back in the section of the report about the informal dialogue were what the scrutiny and other officers noted as the points raised and appeared to be accepted by members as an accurate reflection.

Although formal scrutiny may only take place in the setting of formally constituted Committee meetings, informal task and finish or working groups are a regular feature in most Council’s arrangements and other informal dialogue is encouraged to embed a positive scrutiny culture. The Good Scrutiny Guide notes the benefits of informal meetings as part of the overall scrutiny approach and goes on to say *“What approach works best will depend on the political culture of the authority concerned, but more informality and more dialogue does not automatically mean worse scrutiny.”*

In our Council we recognise that our scrutiny approach is evolving, and we will take learning from this experience to capture our approach to scrutiny more clearly, beyond the specific legal framework and procedures set out in the constitution. I therefore propose the development of a Protocol between the Executive, Scrutiny and Officers who serve both to further build the Council's approach and aid overall understanding. I would be happy to discuss this suggestion further through the established Members Working Group convened by Governance and Ethics Committee as part of the Council's review of the new Governance arrangements.

In relation to a description of the options available and the reasons for the decision, I would draw your attention to paragraphs 46,47 and 48 of the report specifically. These paragraphs and the wider content of the report reflect the co-production approach taken to develop the strategy and the specific request from carers that support is delivered and commissioned in an integrated way across health and social care which is reflected in the strategy.

Conclusion

Feedback from members as part of the informal dialogue is included in the report to recognise their contribution in shaping the strategy and is reflected in the report. It is clear that this was through an informal process and not formal scrutiny.

Officers genuinely thought it was important that Cabinet members were made aware of this and relevant information arising from this process when Cabinet was reaching its decision. Had no mention of the activity or views expressed been reflected in the report no doubt this would have led to concerns about the purpose of the informal dialogue and been viewed as an attempt to ignore views expressed.

My view is that the report and decision comply with the law and Constitution although the status of the meeting should have been clearer to members taking part as well as what would happen with the informal views expressed. I also apologise for the incorrect use of the word scrutiny in paragraph 43 which was not an accurate description of the activity.

On balance, I am of the view that there is insufficient in your letter to sustain a call-in in respect of this matter but hope that you will accept my assurances to take the learning from these events to develop more detailed documentation relating to the Council's approach to Scrutiny.

In reaching this view I have consulted with the Chief Executive, relevant Chief Officers, the Statutory Scrutiny Officer and the Chairman of Overview Committee.

I would be happy to discuss any of the above further if that would be helpful.

Yours sincerely



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